

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GAMALIEL ELIZALDE,
Plaintiff,
v.
WILLIAM MUNIZ,
Defendant.

Case No. [16-cv-04607-JSC](#)

ORDER TO SHOW CAUSE

Re: Dkt. No. 7

Gamaliel Elizalde (“Petitioner”) brings a petition for writ of habeas corpus (“Petition”) pursuant to 28 U.S.C. § 2254 alleging violations of Petitioner’s Sixth and Fourteenth Amendment rights under U.S. Constitution. (Dkt. No. 1.) On September 2, 2016, the Court issued an Order directing Petitioner to serve Respondent and Respondent’s attorney with a copy of the order and the petition, and requiring Respondent to file within 60 days of the Order an answer showing cause why a writ of habeas corpus should not be granted. (Dkt. No. 4 (“Initial Show Cause Order”).) This portion of the Order was in error as Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts requires the Clerk of Court to serve the petition and any orders. Now pending before the Court is Petitioner’s motion to stay this case and hold it in abeyance to allow him to exhaust an unexhausted claim. (Dkt. No. 7.) Accordingly, the Court orders as follows:

1. The Initial Show Cause Order is VACATED.
2. The Clerk of Court shall serve a copy of Petitioner’s motion to stay, the petition, this Order, and the Initial Show Cause Order on Respondent and Respondent’s attorney, the Attorney General of the State of California.
3. If Respondent agrees with Petitioner’s request to stay this case, then the parties

1 shall file a stipulation and proposed order on or before **December 23, 2016**. If Respondent does
2 not agree, then Respondent shall file an opposition on or before **January 6, 2017**, and Petitioner
3 shall file a reply on or before **January 13, 2017**. The motion to stay will then be deemed
4 submitted on the papers without oral argument.

5 **IT IS SO ORDERED.**

6 Dated: November 17, 2016

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8 JACQUELINE SCOTT CORLEY
9 United States Magistrate Judge
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